

REMARKS

Claims 1-16 are pending in the present application. Claims 3, 6 and 8 have been amended to delete the exemplary language, which is now recited in new claims 14-16. Claim 5 has additionally been amended, which finds support in the specification at page 5, line 28. Additionally, claims 11 and 12 have been amended to remove the improper use language. No new matter has been added by way of the present claim amendments.

Claims 1-13 are subject to a Unity of Invention restriction under 35 USC 121 and 372 for reciting inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1. (*See*, Office Communication, at page 2). Applicants respectfully traverse.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1-12. With regard to the species election, Applicants elect sunflower oil among the vegetable oils recited in claims 1, 11 and 12. Furthermore, Applicants elect white oil among the mineral oils recited in claim 6.

Claim(s) 1, 11, 12 and 15 are directed to the elected species. As acknowledged by the Examiner, at least claim(s) 1, 11, 12 and 13 are generic.

According to MPEP 803, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. Since claim 13, placed in Group II, is directed to a method of using the product recited in claims 1-12, which are placed in Group I, by searching one group the Examiner is necessarily searching the other group, since the claims are so closely related. Therefore, it would not be undue burden to search all of the pending claims.

Unity of invention exists when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features. Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic approach. There should be a broad, practical consideration of the degree of interdependence of the alternatives presented, in relation to the state of the art as revealed by the international search or, in accordance with PCT Article 33(6), by any additional document considered to be relevant. *See* MPEP § 1850.

In the present instance, the special technical feature is a composition comprising tall oil fatty acids or their derivatives and one or several vegetable oils. The document which the Examiner uses to allegedly teach the presently claimed invention (www.nutrasanus.com/grapeseed.html) lacks the requisite tall oil fatty acids or their derivatives and is directed only to grapeseed oil extract. Thus, the reference does not serve to destroy the lack of unity of the presently claimed invention. Accordingly, if the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims.

Additionally, Applicants respectfully submit that all vegetable oils recited in the claims are useful in the present invention, although they are derived from different plants. Thus, there is no need to require a species election.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding Restriction Requirement and Election of Species Requirement.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Monique T. Cole, Registration No 60,154 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: December 17, 2007

Respectfully submitted,

By: 
Gerald M. Murphy, Jr.

mtc Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant